

REMARKS/ARGUMENTS

In view of both the amendments presented above and the following discussion, the Applicants submit that none of the claims now pending in the application is obvious under the provisions of 35 USC § 103. Furthermore, the Applicants also submit that all of these claims now satisfy the requirements of 35 USC § 112. Thus, the Applicants believe that all of these claims are now in allowable form.

If the Examiner believes that there are any unresolved issues in any of the claims now pending in the application, the Examiner is urged to telephone Alberta A. Vitale, at (203)469-8097 so that appropriate arrangements can be made for resolving such issues as expeditiously as possible.

Specification Amendments

Applicants have amended the specification to correct typographical errors and to use proper idiomatic English. Because of the number of amendments made, Applicants are submitting a substitute specification, including the claims and abstract. The substitute specification includes no new matter. Appendix A includes a marked-up version of the substitute specification showing all the changes (including additions and deletions) to the specification of record, and also including amendments to the claims and abstract. A clean substitute specification

Appl. No. 09/674,347
Amdt. dated Jun. 8, 2004
Reply to Office Action of March 8, 2004

as required by 37 CFR § 1.125(c) is also included in Appendix B.

Claim Amendments

Amendments to the claims are included in the listing of the claims and in the marked-up version of the specification at Appendix A. Claim 7 has been amended to overcome the 35 USC § 112 rejection.

Abstract Amendments

Amendments to the abstract are included in the marked-up version of the specification at Appendix A.

Rejections under 35 U.S.C. § 112

The Office Action rejected Claims 7-13 under 35 U.S.C. § 112, second paragraph. The Office Action at paragraph 2, page 2 states "[r]egarding claim 7 line 2, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d)."

Applicants have amended claim 7 in response to this rejection by deleting the language "such as an ATM or IP network". In view of Applicants' amendment, Applicants respectfully request that the 35 USC § 112 rejection of claim 7 be withdrawn.

Rejections under 35 U.S.C. § 103

The Office action has rejected claim 7 under the provisions of 35 USC § 103 as being obvious over the teachings in the Isono patent (United States patent 5,623,405 issued to Osamu Isono et al. on April 22, 1997 (hereinafter Isono '405)) taken in view of the Bernstein patent (United States patent 5,912,880 issued to Greg M. Bernstein on June 15, 1999 (hereinafter Bernstein '880)). This rejection is respectfully traversed.

For prosecution efficiency, Applicants will address the rejection as it applies to amended claim 7. Claim 7, amended to overcome the 35 USC § 112 rejection, is recited as follows:

System for charging, in a packet based telecommunication network, the packet load per connection, characterized by a measuring device (2) for measuring the time period (t) between a set number (N) of received or transmitted packets belonging to the same connection. (emphasis added).

Applicants will address the primary reference first. Isono '405 does not provide any teaching or suggestion of "measuring the time period" as claimed in claim 7. The only relevance of Isono '405 to the present application is that Isono '405 deals with accounting. Isono '405 does not involve any time measurement. An advantage of Applicants' invention is "shifting a portion of the network

traffic to periods outside the peak hours so that the network has a smaller configuration and is thereby less expensive." Applicants' invention provides the advantage that "cells offered are spread as much as possible." (Paragraph [009] of Substitute Specification). Isono '405 does not provide this incentive; Isono '405 accounting is based on the type of information (speech, image) as explained in the summary of the invention at col. 2, lines 37-41, "the present invention is to provide an accounting system capable of flexibly charging users for communications services on the basis of the types of media (information type)."

In the secondary reference, Bernstein '880, time measurements take place, but these are for recovering timing in receivers, for synchronization in Constant Bit Rate (CBR) systems. Specifically Bernstein at Col 2, lines 61-67 states "FIG. 2 is a functional block diagram demonstrating a technique according to the present invention for recovering timing from a CBR stream. Essentially, the invention involves correcting the receiver's clock according to an average cell interarrival time. That time may be derived from the time required to receive a predetermined number of cells." (Emphasis added; see also, Bernstein '880, claim 1; Col. 1, line 65 to Col. 2 line 7; Col 2, lines 61-67).

Accordingly, this system is also not offering an incentive for smoothing, that is, e.g., "offer the traffic as evenly as possible. . . . urge the network user via the

charging mechanism to offer the traffic in a less bursty way." (Paragraph [009], Substitute specification).

It is certainly not obvious to combine Isono '405 and Bernstein '880 into a design for a system which has a completely different purpose such as Applicants' "measuring the time period (t) between a set number (N) of received or transmitted packets belonging to the same connection" Isono '405 "relates . . . to an accounting system and method suitable for an ATM network." (Col. 1, lines 13-15) Bernstein '880 "relates . . . to the field of recovering timing across a packet switching network, such as an Asynchronous Transfer Mode (ATM) network, that transmits fixed length packets or cells." (Col. 1, lines 6-10) These are clearly completely different purposes.

For all of the above stated reasons, Applicants respectfully submit that the 35 USC 103 rejection of claim 7 should be withdrawn.

The Office action has rejected claims 8 and 11 under the provisions of 35 USC § 103 as being obvious over the teachings in the Isono '405 taken in view of Bernstein '880 and further in view of the Buhler patent (United States patent 6,104,704 issued to Gerhard Buhler on August 15, 2000 (hereinafter Buhler '704)). This rejection is respectfully traversed.

Claim 8 is drawn to a: "System according to claim 7, characterized by a calculation device (4) for

calculating the number of packets per said period of time (t) and supplying that calculation result (-r-) to a billing system (5).” (Emphasis added).

Claim 11 is drawn to a: “System according to claim 8, characterized by an aggregation device (6) for aggregating the calculation result (r) and passing on the aggregated result (ra) to the billing system.”

Applicants respectfully note that claims 8 and 11 depend from claim 7, the rejection of which was traversed above. The rejection (paragraph 3 of the Office action) of claim 7 included the same primary and secondary references as the present rejection of claims 8 and 11. Therefore, for the reasons stated above with respect to the rejection of claim 7, and based upon the dependency of claims 8 and 11 from claim 7, Applicants respectfully submit that the rejection of claims 8 and 11 be withdrawn.

Assuming arguendo that the rejection of claim 7 from which claims 8 and 11 depend is not traversed, Applicants will address the Buhler '704 reference. Buhler '704 is restricted to internet telephony. The field of the Buhler '704 invention is “the field of Internet telephony, and more particularly . . . methods and apparatus for gathering and processing connection information and providing flexible billing services for Internet telephony.” (Col. 1, lines 8-11).

With the Buhler invention, a user may select a specific "packet density" to be used for a voice connection. This is discussed in the specification as follows:

FIG. 3 illustrates details of the operation of a billing server 62 in accordance with the teachings of the present invention. FIG. 3. illustrates a first client 52 connecting to a second client 54 via first and second ISPs 56 and 58, respectively; By communicating with their respective ISPs 56 and 58, the clients 52 and 54 are able to establish a voice telephony connection and to make various choices about the connection. These choices include billing choices, such as whether the originator of the connection will pay, or whether the connection is to be a collect or 800-number equivalent or the like in which the called party will pay, quality of service choices, such as whether available voice enhancements or increased packet density will be used, and whether real-time billing information is to be displayed. ISPs 56 and 58 establish a connection via the Internet 22. One of the ISPs 56 or 58 or both transfers billing information to an ISP 60 and thence to a billing server 62, also via the Internet 22. (Column 4, lines 50-64, emphasis added).

By using a billing server such as the billing server 62, a service provider can gather and process information about Internet calls which was previously unavailable, and can provide billing services which cannot be

provided with the present state of the art of conventional voice telephony. Because of the nature of Internet telephony and Internet communication in general, the information packets transmitting the call also carry information about the call. This information can be readily extracted from the packets and used to provide continuously updated, real-time information at the request of the user. This information can include, for example, the packet path displayed as nodes and lines on a geographic map, the duration of the call which may be continuously updated, if desired, the packet density or the packets per unit time used for the call, available voice enhancements or alterations, and which available voice enhancements or alterations are actually used. A user may view his or her call detail records in real time during a call, or at any time by contacting the billing server. Billing servers according to the teaching of the present invention can accommodate different per-minute rates for different packet densities and for enhanced voice quality, and can provide variable billing according to the level of service used, the time of day, or the like. (Column 6, lines 5-27, emphasis added).

At step 512, the billing server receives notification of the end of the call. Next, in step 514, the billing server creates and logs a detail of the call, containing all the appropriate information, such as the originating and terminating users, originating and terminating ISPs, call start, call termination, and any enhanced information such as call routing,

packet density, and voice enhancements.

Finally, in step 516, the billing server periodically furnishes billing information to the customer ISPs. This is typically done on a monthly cycle but may be done on any desired schedule. (Column 6, lines 49-49, emphasis added).

Hence, as can be understood from the specification Buhler '704 billing is based on the chosen/used density that is not changing during the call. There is then no need to measure the number of packets per period of time. Buhler provides not teaching or suggestion of Applicants' claimed invention. Nor does Isono '405 in view of Bernstein '880 and further in view of Buhler '704.

For all of the above stated reasons, Applicants respectfully submit that the 35 USC § 103 Rejection of claims 8 is traversed. The rejection of claim 11 is traversed based upon its dependence from claim 8.

The Office action has rejected claims 9, 10, 12 and 13 under the provisions of 35 USC § 103 as being obvious over the teachings in the Isono patent (United States patent 5,623,405 issued to Osamu Isono et al. on April 22, 1997 (hereinafter Isono '405)) taken in view of Bernstein '880 and further in view of the Buhler '707 and in further view of the Saari patent (United States patent 6,338,046 issued to Gerhard Buhler on January 8, 2002 (hereinafter Saari '046)). This rejection is respectfully traversed.

Applicants respectfully note that claims 9, 10, 12 and 13 depend from claim 7, the rejection of which was traversed above. The rejection (paragraph 3 of the Office action) of claim 7 included the same primary and secondary references as the present rejection of claims 8 and 11. Therefore, for the reasons stated above with respect to the rejection of claim 7, and based upon the dependency of claims 9, 10, 12 and 13 from claim 7, Applicants respectfully submit that the rejection of claims 9, 10, 12 and 13 be withdrawn.

Conclusion

Thus, the Applicants submits that none of the claims, presently in the application, is obvious under the provisions of 35 USC § 103. Furthermore, the Applicants also submit that all of these claims now fully satisfy the requirements of 35 USC § 112.

Consequently, the Applicants believe that all these claims are presently in condition for allowance. Accordingly, both reconsideration of this application and its swift passage to issue are earnestly solicited.

Respectfully submitted,

June 7, 2004


Peter L. Michaelson, Attorney
Customer No. 007265
Reg. No. 30,090
(732) 530-6671

Appl. No. 09/674,347
Amdt. dated Jun. 8, 2004
Reply to Office Action of March 8, 2004

MICHAELSON & WALLACE
Counselors at Law
Parkway 109 Office Center
328 Newman Springs Road
P.O. Box 8489
Red Bank, New Jersey 07701

CERTIFICATE OF MAILING under 37 C.F.R. 1.8(a)

I hereby certify that this correspondence is being deposited on **June 8, 2004** with the United States Postal Service as first class mail, with sufficient postage, in an envelope addressed to:

Mail Stop Non-Fee Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450



Signature



Reg. No.

(PTT106AMEND/ca:132)